



**[4910-13]**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 93**

**[Docket No.: FAA-2010-0302; Amdt. No. 93-98]**

**RIN 2120-AK46**

**The Extension of the Expiration Date of the New York North Shore Helicopter Route**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The action amends the expiration date of the final rule requiring pilots flying civil helicopters under Visual Flight Rules to use the New York North Shore Helicopter Route when operating along the north shore of Long Island, New York. The current rule expires on August 6, 2014. The FAA finds it necessary to extend this rule for an additional two years to preserve the current operating environment in order to determine whether the mandatory use of this route should be made permanent. The FAA will conduct notice and comment rulemaking on the permanent use of this route. A limited extension of the current rule provides needed time to conduct the appropriate analysis to assess the rule's impact and proper rulemaking procedures.

**DATES:** This final rule is effective August 6, 2014, through August 6, 2016.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact David Maddox, Airspace Regulation and ATC Procedures Group,

AJV-113, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202-267- 8783; email [david.maddox@faa.gov](mailto:david.maddox@faa.gov).

For legal questions concerning this action, contact Lorelei Peter, International Law, Legislation and Regulations Division, AGC-200, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202-267-3073; email [Lorelei.Peter@faa.gov](mailto:Lorelei.Peter@faa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Authority for this Rulemaking**

The FAA’s authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

The FAA has broad authority and responsibility to regulate the operation of aircraft, the use of the navigable airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. (49 U.S.C. 40104 et seq., 40103(b)). The FAA’s authority for this rule is contained in 49 U.S.C. 40103 and 44715. Under section 40103, the Administrator of the FAA has authority to “prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for \* \* \* (B) protecting individuals and property on the ground. (49 U.S.C. 40103(b) (2)). In addition, section 44715(a), provides that to “relieve and protect the public health and welfare from aircraft noise,” the Administrator of the FAA, “as he deems necessary, shall prescribe \* \* \* (ii) regulations to control and abate aircraft noise \* \* \*.”

## **I. Background**

In response to concerns from local residents regarding noise from helicopters operating over Long Island, the FAA adopted the New York North Shore Helicopter Route final rule (77 FR 39911). The rule is based on a voluntary Visual Flight Rule (VFR) route that was developed by the FAA working with the Eastern Region Helicopter Council. The rule requires civil helicopter pilots operating under VFR, whose route of flight takes them over the north shore of Long Island between the VPLYD waypoint and Orient point, to use the North Shore Helicopter Route, as published in the New York Helicopter Chart.<sup>1</sup> The rule permits pilots to deviate from the route and altitude requirements when necessary for safety, weather conditions, or transitioning to or from a destination or point of landing. The rule was promulgated to maximize use of the route as published in order to secure and improve upon decreased levels of noise that had been voluntarily achieved.

The current rule terminates on August 6, 2014. The FAA limited the duration of the rule because at the time of promulgation the FAA did not know the current rate of compliance with the voluntary route or the circumstances surrounding an operator's decision to not use the route. The FAA concluded that "There is no reason to retain this rule if the FAA determines that it is not actually improving the noise situation along the north shore of Long Island."<sup>2</sup> Accordingly, the agency decided that the rule would sunset in two years if it was determined that there is no meaningful improvement in the effects of helicopter noise on quality of life or that the rule was otherwise unjustified. Specifically, the FAA stated "Should there be such an improvement, the FAA may, after appropriate notice and opportunity for comment, decide to make the rule permanent.

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<sup>1</sup> The voluntary route originally was added to the Helicopter Route Chart for New York on May 8, 2008.

<sup>2</sup> See 77 FR 39918.

Likewise, should the FAA determine that reasonable modification could be made to the route to better address noise concerns (and any other relevant concerns), we may choose to modify the rule after notice and comment."<sup>3</sup>

## **II. The Final Rule**

This action extends the requirement for pilots of civil helicopters to use the North Shore Helicopter Route when transiting along the north shore of Long, Island for an additional two years, while the FAA considers whether to make the mandatory use of the route permanent. The current rule requiring use of the route expires on August 6, 2014. Public input to this consideration is critical and additional time is needed to conduct the rulemaking process. However, the FAA does not want to disrupt the operating environment and cause any confusion on using the route during this interim period. Therefore, the FAA finds that a two year extension of the current rule is warranted to maintain the current operating environment and permit the agency to engage in rulemaking to determine future action on this route. The FAA expects to issue a Notice of Proposed Rulemaking on the permanent use of this route in the immediate future. The FAA finds that under Title 5 of the United States Code section 553(b) good cause exists that notice and public comment are impracticable and contrary to the public interest.

## **III. Regulatory Notices and Analyses**

### **A. Regulatory Evaluation**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980

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<sup>3</sup> Id.

(Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this extension. The reasoning for this determination follows.

Since this rule only extends the current requirements for pilots of civil helicopters to use the North Shore Helicopter Route when transiting along the north shore of Long Island for an additional two years, the expected outcome will be a minimal impact and a regulatory evaluation was not prepared.

The FAA has therefore determined that this extension is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

#### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will maintain the current operating environment for two years, therefore the FAA maintains that it will only have a minimal impact on any small entity affected by this rulemaking action.

### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential

effect of this final rule and determined that it would have only a domestic impact and therefore no effect on international trade.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$151 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

#### F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.



Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

#### G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures,” paragraph 312f. This action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### **IV. Executive Order Determinations**

#### A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

#### B. Executive Order 13211, Regulations that Significantly Affect Energy Supply,

## Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

## **V. Additional Information**

### A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA’s Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or
3. Accessing the Government Printing Office’s web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rulemaking action, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

## **List of Subjects in 14 CFR Part 93**

Air traffic control, Airspace, Navigation (air).

### **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I.

## **PART 93-SPECIAL AIR TRAFFIC RULES**

1. The authority citation for part 93 **is revised** to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44715, 44719, 46301.

2. Amend § 93.101 to read as follows:

### **§ 93.101 Applicability.**

This subpart prescribes a special air traffic rule for civil helicopters operating VFR along the North Shore, Long Island, New York, between August 6, 2012 and August 6, 2016.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on June 2, 2014.

Michael P. Huerta,  
Administrator.

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